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The Censorship in Boston

¶ Boston is unique among cities of the United States in its advance censorship of books, plays and public meetings. Once the literary center of the country, it has now become the hub of censorship.

¶ Though Massachusetts laws affect other cities, Boston alone has established a system of advance control through threat of prosecution or of revoking licenses of halls and theaters.

¶ The guarantees of civil liberty all denounce censorship in advance, leaving the determination of law-breaking to the courts. But not in Boston!

¶ Here is the record of books banned, plays prohibited or censored, meetings forbidden or broken up.

¶ And here are the remedies proposed to break this largely lawless and always ridiculous censorship.

Read the story as told by PROF. ZECHARIAH CHAFEE, JR., *of the Harvard Law School, and give your help.*

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ROF. CHAFEE was graduated from Brown University in 1907 and from the Harvard Law School in 1913. He was associated in the practice of law with Tillinghast & Collins, at Providence, R. I., 1913 to 1916 and 1922 to 1925. He was appointed assistant professor of law at the Harvard Law School in 1916, and in 1919 he was made full professor. He was one of twelve lawyers reporting on the illegal activities of the Department of Justice in 1920. The fall of the present year (1929) he was appointed, with Walter H. Pollak, to investigate the lawless activities of law enforcement officers for the Law Enforcement Committee appointed by President Hoover. He was chairman of the Committee on Coal and Civil Liberties reporting to the United States Coal Commission in 1923 . He is author of *"Freedom of Speech"*, *"The Inquiring Mind"*, a chapter on law in *"Civilization In the United States"* and part author of *"The Next War"*. He is prominent in the campaign to abolish capital punishment in Massachusetts.

THE CENSORSHIP IN BOSTON

by PROF. ZECHARIAH CHAFEE, JR., *of Harvard Law School*

The wisest man who was ever born or lived in Boston, Benjamin Franklin, summed up the whole problem of the control of discussion when he said, "Abuses of the freedom of speech ought to be repressed, but to whom dare we commit the power of doing it?"

Often something which is said or written will seem objectionable to many persons; but in every instance the suppression of such utterances will require that fallible human beings be entrusted with the power of determining what is undesirable. The fitness of the particular officials to decide delicate questions of opinion becomes extremely important. The risks of unrestricted discussion are obvious, but against them must be balanced the dangers of error on the part of censors. The seriousness of these dangers is proved by events in Boston.

Censorship in Boston is an old story running back before the war. But its excesses have been marked chiefly in recent years. It's based on the fear of discussion of two issues—sex and economic radicalism—though it has prohibited also meetings of the Ku Klux Klan, opposed by the Roman Catholics, and on one occasion, a peace meeting on the Common.

The censorship rests on the claim that books, periodicals, plays or meetings present matters which are "obscene" or "against the public interest."

The official chiefly responsible for the censorship is the Mayor. As a member of the board entrusted with granting and revoking licenses for theaters and halls and permits for meetings on the Common, he has assumed the authority to prohibit plays and meetings he opposes. This has been true under the recent administrations of Mayor Curley and Mayor Nichols. The

censorship of books and periodicals is outside his jurisdiction, and is accomplished by threat of prosecution for their sale.

The forces behind this unique censorship are twofold and unrelated, except as they happen to agree in their viewpoint toward "obscenity." They are the Puritans and Roman Catholics. The Puritan element, reflected in the "Watch and Ward Society," is not concerned with prohibiting public meetings either favoring birth control—which have been banned for ten years—or on radical issues. It has rarely acted to censor plays. It is concerned primarily with the book censorship.

The Catholic opposition is unorganized, but the Catholic viewpoint against public agitation of birth control makes itself felt wherever Catholics approach a majority, though nowhere with such rigid determination as in Boston. Both Catholic and Protestant mayors have taken precisely the same stand under pressure of the same forces.

In addition to this advance censorship, the Boston authorities have also had recourse in recent years to the ancient statute, passed in 1646, against blasphemy. Three cases have been brought in Massachusetts since 1925, two of them in Boston, the first such prosecutions in almost a century. Two resulted from speeches at public meetings,—the case against Anthony Bimba at Brockton, and against Prof. Horace M. Kallen in Boston. One was directed against a book, the "Secret of Free Masonry" by Warner G. Williams. One man was acquitted, one case was dismissed before trial, and one was dismissed on appeal after conviction. But the fact that the cases were brought at all, and only in Massachusetts of all states in recent years, is indicative of the temper of the authorities.

Various attempts have been made to break down the censorship of books and meetings. Nothing has been done to tackle the control of plays, or of meetings on Boston Common. The book censorship has been fought by test cases in court involving particular books or periodicals—twice with success—and by the introduction of various bills in the legislature. All such bills have failed of passage.

The censorship of meetings in licensed halls has been twice protested by citizens' mass meetings in the Old South Meeting

House, sponsored by leading men and women. Efforts to stage test meetings have been repeatedly made in the hope of throwing the issue into the courts—all without success.

Practicable remedies lie in organized effort to bring actions in the courts and to pass bills in the legislature. Only a determined opposition by an aroused public opinion can break down this entrenched—and for the most part lawless—assumption of the power of advance censorship.

The story must be told in detail to make clear the lengths to which the Boston authorities have gone. Here it is.

THE BOOK CENSORSHIP

Some 65 books, freely sold in other parts of the United States and passed by the postal authorities, were withdrawn from public sale by Boston booksellers in the years 1927 to '29. A list of them will be found in the appendix. Among the best known of them were: "Elmer Gantry" by Sinclair Lewis; "An American Tragedy" by Theodore Dreiser; "The Hardboiled Virgin" by Frances Newman; "The Plastic Age" by Percy Marks; "Oil" by Upton Sinclair, and "The World of William Clissold" by H. G. Wells. Five successive issues of Scribner's Magazine have lately been barred because of a serial by Ernest Hemingway, "A Farewell to Arms."

This astonishing situation, which has made Boston ridiculous to the rest of the country, is explained in part by the wording of the law. The Massachusetts statute against the sale of books and periodicals "containing obscene, indecent or impure language, or manifestly tending to corrupt the morals of youth," differs from similar laws in other states in testing a book by passages and not as a whole.

The interesting feature of the Boston book situation is that the determination of what books are indecent and the exclusion of such books from sale has not been made for the most part by the ordinary methods of the criminal law; that is, an arrest of a bookseller followed by prosecution and a jury verdict. *Private persons, not public agents and tribunals, have been the main factor in deciding what books should not be sold.*

There have been only two Boston prosecutions in recent years, and these were test cases based on publications which had already been withdrawn from sale before any legal decision. Of these, one was brought into court by the publishers of "The American Tragedy," resulting in a conviction which has been appealed; and the other by H. L. Mencken, editor of the American Mercury, who sold a banned number containing a story, "Hatrack." He secured not only an acquittal, but also a federal temporary injunction restraining the Watch and Ward Society from boycotting his magazine (later dismissed without prejudice for lack of prosecution.)

Practically all the withdrawals of publications from sale have been due to the mere threat or fear of prosecution without any trial whatever. Most of the banned books have never been legally passed on and condemned by judge and jury.

Another singular fact about the Boston situation is that it is confined almost wholly to Boston. Books withdrawn there under threat of prosecution are freely sold in adjoining cities, with occasional exceptions in Cambridge. Yet publications which are criminal under Massachusetts law in one city must be so in another. The explanation is doubtless that the chief market for books is in Boston, and the police authorities there have come to regard control of books as one of their normal activities. The Boston booksellers are organized as an association responsive as one man to threats and have developed and accepted the policy of censorship.

They respond to threats from any quarter. Sometimes it is the police superintendent who warns them, sometimes the Watch and Ward Society, sometimes private individuals. In most instances it is private agencies, though the Watch and Ward Society figures less than is commonly reported. Only 11 of the 65 books withdrawn from 1927 to '29 were on its complaint. But that was because of a change of policy following the "American Mercury" case. *The court in that case in* 1926 *scored as illegal the system of pressure of private agencies on the booksellers.* The booksellers themselves then set up their own censorship. It was on their own decision that some of the 65 books were withdrawn.

The history of the conflict between booksellers and their censors is interesting. The beginning of censorship dates from 1880, when the law was changed to its present form. At first it was applied only to pornographic matter, but later the Society in its zeal began to attack the classics. The booksellers attempted to get the law repealed, but without success. They then made a truce with the Watch and Ward, entering into an agreement by which all questionable books should be submitted to a committee of six persons, three from the Society, three from the book sellers. When a book was found to be obscene by this committee, the book sellers were notified by one of the committee members, and its sale was discontinued.

This worked smoothly until one fine day when the police arrested two women for selling a book which the committee had passed! The Watch and Ward Society had to appear in court to defend a book which the police declared obscene! Thereafter the police and district attorney joined the censors under an agreement not to make an arrest without first putting the case to the committee.

This worked until 1927, when the police broke the agreement by arresting two men for selling the "Plastic Age", a novel by Percy Marks, which had been passed as O. K. by the censorship committee three years before. The charge was later withdrawn, but the publicity stirred up over it aroused scores of complaints against books. Relations between booksellers and the District Attorney and police became strained. The booksellers have since done some censoring of their own, and have also withdrawn from sale all books about which complaint was made.

The most numerous complaints in recent years have come from one Rev. Paul Sterling, an insistent person who takes his "bad" books to the police when the Watch and Ward turns him down. And the Boston police are eager censors. In 1925, for instance the Literary Digest number of the Harvard Lampoon was confiscated on Boston newsstands by order of the Superintendent of Police because of "improper pictures," which were merely comic versions of well known paintings, and newsdealers were warned not to sell it. It was permitted to be distributed

later with the objectionable pictures blocked out. Similar action was taken in Cambridge.

Since J. Frank Chase, the agent of the Watch and Ward, died the situation has become much worse. Many more books have been banned each year than in his lifetime. The police have been much more easily shocked than was he.

The booksellers in 1928 went to the Legislature for relief. They caused a bill to be introduced, requiring a warning from the police that a book is objectionable before its sale becomes a crime, and providing for a proceeding in equity in the Superior Court instead of a criminal prosecution. Another bill, introduced independently, required that the entire theme of a book, not isolated passages, be made the basis of criminality. Both bills failed.

In 1929 the fight for relief was joined by the Massachusetts Library Club, composed of public librarians. A bill was introduced covering the same features as the former bills, with the exception of the proceeding in equity. It proposed that a seller can be held liable only if he "knowingly" distributes a book containing language which is indecent when considered in connection with its entire context and theme. Books were separated from other printed matter, which was untouched.

Although the bill had wide support and very little opposition, it was defeated by a few votes when it came before the State Senate.

CENSORSHIP OF THE THEATER

The Mayor of Boston grants licenses to theaters for the theatrical season; but a board consisting of the Mayor, the Police Commissioner, and the Chief Justice of the Municipal Court may by a majority vote revoke or suspend any such license "at their pleasure." Thus they can close a theater if a play which they think indecent is performed notwithstanding an intimation of their view to the manager. It used to be said of a former mayor that he journeyed to New York to enjoy dramas that were exciting comment, and then as a result of his observations banned them in Boston.

This censorship of the theater is far less active than the censorship of books, which rests on less direct interference. And it is less active than in former years, due to more tolerant public standards. It is directed primarily to serious plays, not to burlesque or leg-shows, which have been for years as broad in Boston as elsewhere.

Four plays in recent years have been banned entirely,—the "Gods of the Lightning" based on the Sacco-Vanzetti case, "Fiesta" a Harvard Dramatic Club play written by Michael Gold, which was produced in Cambridge without interference, "Desire under the Elms" by Eugene O'Neill, and the "Strange Interlude" by the same author. Several others have been cleansed of profanity or "obscenity" before showing or after one performance—notably "Porgy", "What Price Glory", and "Jarnegan', produced by Richard Bennett.

The Boston scheme for theatrical regulation has some advantages for managers over the common law method, which would render them liable to prosecution without warning after they had gone to great expense in the production of a play. If some kind of dramatic censorship is desirable, this scheme of board control is better than the English censor, whose absurdities have long been a target for George Bernard Shaw. A single censor is liable to become unduly preoccupied with questions of morality, while the three Boston officials have other things to think about.

Nevertheless, the Boston scheme has dangers which deserve consideration. The difficulty is not merely that the Mayor, the Police Commissioner, and the Chief Justice of the Municipal Court are not put into office because of their qualifications for dealing with the rightness and wrongness of abstract ideas. Objections would still exist if this power to censor the drama were entrusted to a board consisting of the Presidents of Boston University, Boston College, Harvard, and Tufts, the Episcopal Bishop, the Roman Catholic Cardinal, a Jewish rabbi, and the editors of the "Transcript" and the "American." The question is, whether even these persons could safely be entrusted with the arbitrary power to control the drama, or whether it would be better to allow the producers to make their own decisions on

their plays, at risk of being punished after conviction before a jury.

In the latter way, if a crime is committed, it can be severely dealt with. *The present method is more than a power to punish crime. It is a power by which, it is true, crime may be headed off, but on the other hand the threat of revocation of a theatre license may deprive the public of a play which would be approved by a jury merely because this board of officials—or the most influential member thereof—happens to be opposed to its subject matter.* The problem still remains, whether any human being is good enough to be a censor.

It may be asked in what respect control of plays by jury verdicts is better than control by censors, since in either case the decision is made by human beings. Unless we are to have absolutely unrestricted drama, we can not eliminate the risk of human caprice either before or after production. The answer is, that the censor is in danger of becoming professionalized and out of touch with public standards of tolerance, while the jury comes to the issue of decency fresh from ordinary occupations, represents the views of twelve persons instead of one or three, and on the whole brings in the opinion of the mass of playgoers upon the question of what they want to see and hear. The difficulty that the jury ordinarily sits after the harm is done and punishes the producer without warning, might be met, if really important, by the New York device of calling a jury when the play is first put on, as was done in Quincy.

No solution of the problems of indecent dramas, books, and periodicals is entirely satisfactory. Still, the most outrageous can easily be stamped out by prosecution, and I sometimes wonder if we are not overanxious to get rid of the others by operation of the law. The situation may prove its own best corrective. Nothing nauseates so quickly as a surfeit of licentiousness. Audacious ballets once shocked some and allured others, but of late years they have reduced the public to the state of mind of the London bus driver who ejaculated to the coyly descending damsel, "Step lively, Madam, legs ain't no treat to me."

It should be noted that no censorship of motion pictures exists in Massachusetts. A proposal to establish a state censor-

ship was voted down overwhelmingly at the polls in 1924. But even in the absence of a state censorship, no case has arisen of serious interference by Boston authorities with any film—at least none which has attracted public attention. Apparently the industry's own censorship has been strict enough to satisfy even Boston.

THE CONTROL OF MEETINGS IN LICENSED HALLS

Every public hall in Boston is licensed annually by the Mayor. That is a regulation common to most cities. Licenses may be revoked by him at any time under authority of a state law for unsatisfactory structural conditions and for that reason alone. His action is subject to approval by a large board of men familiar with building construction.

The Mayor has no authority to withhold or revoke a license because of his objection to any use to which a hall may be put. Criminal proceedings alone furnish the only legal control over the misuse of a public hall.

Yet in practice the Mayor controls meetings in public halls by a threat to revoke the licenses for "unsatisfactory structural conditions" if any meeting he opposes is held. No hall-owner dares disobey such a threat. It is only too easy in the maze of building regulations to find some structural defect.

Probably no hall-owners have ever had their licenses revoked for holding a meeting forbidden by the Mayor, because none has openly defied him and only a few took a chance by not consulting the Mayor's office in advance on a doubtful meeting. That means in effect closing all public meeting places in Boston to any favorable discussion of birth control—the chief topic at which the restriction is now aimed. Nor has the Ku Klux Klan been able to hold meetings either in public or on private property behind closed doors. The Mayor's threat alone was sufficient during the Curley regime to ban all such meetings. No Klan cases have arisen under Mayor Nichols.

When a hall-owner is doubtful of the Mayor's attitude, he calls up the License Commissioner's office. The business is not done in writing. The License Commissioner either expresses

what he knows to be the Mayor's view, or he inquires of the Mayor—and his decision is conveyed to the obliging hall-owner. The License Commissioner, John J. Casey, who has been in office for many years under many mayors, is referred to by hall-owners as their "czar," though he is said to be a most agreeable fellow. His personal views doubtless carry weight with the mayors, but he has only advisory powers.

MAYOR CURLEY ON FREE SPEECH

Occasionally the Mayor makes public announcement of his position, and in plain language for obvious political effect. Mayor James M. Curley expressed himself thus on birth control meetings, in a letter in March, 1925, to Mr. John S. Codman, Boston representative of the American Civil Liberties Union:

"You can have no difficulty in arriving at a very clear knowledge of my opinions and my attitude towards this pernicious doctrine, the campaign for its exploitation, and the campaigners; and there is not the slightest chance that I will change my views, or cease to exercise my legitimate power and authority to arrest the progress of this infamous cult.

"You and your allies call this crime against civilization and the race, 'Birth Control,' a pleasant sounding euphemism for 'Birth Prevention,' which is merely the crime banned in all lands among all peoples, by all the codes, secular and sacred, under the ugly name of 'Abortion'; and which is abhorrent to sane, normal, decent humanity no matter how sweetly disguised in terminology and no matter how skillfully hidden in the Trojan Horse you term freedom of speech and assembly.

"When you point out to me the instance of a person who gave an address in Franklin Union Hall entitled 'The Case Against Birth Control, an Answer to Margaret Sanger' and assume by implication that my tolerance and restraint open the door to general advocacy of this crime, you misunderstand me as signally as you demonstrate your own lack of the faculties of reason and logic. You might just as well seek to convince me that the Christian churches which warn their congregations

against the depravity and degeneracy of the destroyed Cities of the Plain, should open their doors and give their pulpits to the missionaries of Sodom and Gomorrah.

"The duty to denounce degeneracy and unnatural crime does not carry as a corollary the right to permit the advocacy of crimes of any character, much less crimes against the propagation and continuance of the human race..."

In a letter to the American Civil Liberties Union, on the issue of Klan meetings on private property in Boston, Mayor Curley said (in October, 1923):

"I am dealing with a practical question and not with a strained conception and tortured theory of a great principle of liberty; and I would be false to my oath of office were I to permit meetings that carry with them the threat of riot, disorder and worse in this city, if it lies within authority to prevent such gatherings.

"Your fantastic conception of an honored principle carries with it the implication that no American community can protect itself from the enemies who plot and plan its destruction and I have no hesitation in aligning myself with those who believe the preservation of the Commonwealth and its ordered life transcends in importance the acceptance of any interpretation of any principle or paragraph of the Bill of Rights that negatives their force and virtue and strikes the sword of authority from the hand of the State. Your interpretation is merely an illusory and superaltruistic definition of national hari-kari.

"The Ku Klux Klan has placed itself outside the law; its leadership is vicious, mercenary and immoral, its membership credulous, intolerant and anti-social; its aims lawless, its activities terrorizing, its existence dangerous to the state, abhorrent to Christianity and the brotherhood of men and detrimental to true Americanism."

MAYOR NICHOLS ON FREE SPEECH

When Mayor Curley was succeeded by Mayor Nichols, it was expected that there would be a change in policy. Instead of that, early in Mayor Nichols' administration, the Boston authori-

ties prohibited public meetings to aid in the defense of Anthony Bimba, who had been prosecuted for "blasphemy and sedition" for a speech made in Brockton. Thereupon a committee of Boston citizens, headed by Moorfield Storey, former Governor Eugene N. Foss, James P. Munroe, George R. Nutter, Richard W. Hale, Rev. Paul Revere Frothingham, the Rev. Samuel McCord Crothers, George W. Coleman and others, addressed a protest to Mayor Nichols, in which they said:

"Within the last few years a practice has grown up among city officials of preventing proposed public meetings in Boston which, because of the supposed purpose or their sponsors, have not met with official approval. Prevention has been accomplished, either by threats to revoke the license of any hall-owner harboring such meetings, or by closing the halls in which the meetings were to be held on the pretext that fire, health or building regulations affecting the premises had not been complied with.

"We had assumed that when you became Mayor this arbitrary interference with free speech and free assembly would cease. We have, therefore, been surprised and disturbed that, during your recent absence in New York City, other cases of interference with public meetings by city officials have occurred....

"Unlawful actions or utterances at meetings should of course receive the attention of the police, but to assume in advance that unlawful actions or utterances are intended at a meeting or that the attempt to hold a meeting is of itself unlawful, merely because of the supposed views of its sponsors, is a gross violation of civil rights and a direct attack upon one of our most cherished institutions. To prevent meetings by such methods as threatening hall-owners, or by deliberately hunting for technical violations of the building code, etc. as a pretext for closing a hall, is neither fair nor straightforward and does great injury to the reputation of the city."

Two months later Mayor Nichols replied:

"Let me say at once that I am as deeply interested as anybody can be in the subject of free speech and public assemblage in the City of Boston, but I do not believe and cannot think that any who signed the letter of April 13 believes that the slightest

encouragement should be given to persons who, under cover of free speech and public assemblage, indulge in artful language directed against our free institutions and in seditious talks advocating the overthrow of our government....

"Since the war we have had a continuation of seditious propaganda, financed in part from foreign sources, and actively or passively countenanced by people who may be well intentioned but do not realize what the propaganda really means. We have, moreover, an epidemic of indecency in various publications and on the stage which constitutes a most perplexing problem, and one which cannot be ignored. Here, too, as in the case of public meetings, it is not always possible for the Mayor of Boston to go on the theory that he has no responsibility until something indecent or seditious has been said or done. It is difficult to draw the line and mistakes are bound to occur; but the line must be drawn somewhere, and I shall endeavor to the best of my ability to draw it as long as I am Mayor of Boston...."

In accordance with these sentiments, Mayor Nichols has continued the ban on birth control meetings, at least those favorable to a repeal of the Massachusetts law which forbids the dissemination of birth control information. So far as is known, the Ku Klux Klan has not attempted to hold a meeting under Mayor Nichols' administration.

THE RECORD OF MEETINGS BANNED

Birth control is the continuing chief issue around which the hall censorship revolves. Meetings opposing it are freely held without interference, for the reasons given by Mayor Curley. The ban has been directed particularly to Mrs. Margaret Sanger, who has been unable to speak at any public meeting in Boston since 1920. Meetings arranged for her in 1923, 1924 and 1925 were prohibited by Mayor Curley, and in 1929 by Mayor Nichols. The Community Church finally put her on their Sunday morning program in Symphony Hall in May, 1929. The authorities claimed they had no jurisdiction over religious meetings, and did not interfere. Her only other Boston appearances were at a Ford Hall burlesque in the spring of 1929 to which she came with a gag

on her mouth, and at a birth control committee dinner this autumn at the Hotel Statler.

The Klan attempted to hold private meetings in 1923 and 1924. One was scheduled for a licensed hall and the other for a hotel room. In both cases representatives of the Mayor's office found structural defects with the property which prevented the meetings from being held. The Mayor showed no anxiety about building conditions in halls where meetings on his own side were held, although it would seem much more important to protect one's friends from fire and collapsing floors rather than one's enemies.

Interference with other than birth control or Klan meetings has been only occasional. One hall-owner said he would not think it necessary to inquire of the Mayor's office on any other issue, "except possibly a Sacco-Vanzetti meeting." He was sure "Tom Heflin could not speak in Boston" and he figured it would be useless to inquire. The only other meetings that have been prohibited in recent years were meetings for raising defense funds for Anthony Bimba. Notable among those was a mass meeting scheduled for the Tom Paine Memorial Hall,—of all places,— with Scott Nearing as speaker, on the recognition of Russia. The meeting was broken up for fear it would turn into a defense of Bimba, and Nearing was arrested when he attempted to speak on the street.

At the time of the execution of Sacco and Vanzetti in 1927, it was impossible for those who wished to protest the execution to secure any licensed hall in Boston, save one, which was found after a long search. Even a year later on the first anniversary of their execution, it was possible to get only this one hall to take the risk of running foul of the Mayor's office. On both occasions the police were present. Following the second meeting one of the speakers, Prof. Horace M. Kallen of New York, was charged with blasphemy, but the warrant was later withdrawn.

Even two years after the execution the committee arranging a memorial meeting was unable to secure any hall in Boston seating over a few hundred persons. They therefore transferred their meeting to New York City, whither the Boston speakers journeyed. The Old South Meeting House, historic forum of

free speech in Boston, refused to permit a Sacco-Vanzetti memorial meeting within its walls, although agreeing to its use by the same committee to protest against other halls closing their doors to them!

If a speaker in a Boston public hall utters indecencies, or advocates crimes such as the overthrow of the government by violence, he can be punished after conviction by a jury. If the speeches break no law, nobody should be punished. Each man should be responsible to the limit of the law for his own crime. The prohibition of meetings in advance is not a power to punish crime. It is a power which, under the guise of heading off crime, may suppress any discussion to which the Mayor happens to be opposed, even though no jury would ever convict for it. It is just as much a censorship of oral discussion as his power to suppress a newspaper for distasteful editorials would create a censorship of written discussion.

RESTRICTIONS ON BOSTON COMMON

Even if the Mayor and his associates abandoned their assertion of power over public halls, there are many speakers who have not the funds to hire a building, and yet have views which they ardently desire to express, and which perhaps it is for the advantage of citizens to be able to hear. For such men there exists in the center of Boston an open forum, an open-air forum, the Common. On Sunday afternoons particularly, it has been the custom for years to hold meetings there. A half dozen small gatherings are usually held on fair Sundays, attended by an average total of a thousand people. The organizations using the Common more or less regularly are either religious or radical —notably the Socialist and Communist parties.

But here again municipal censorship exists, this time with the express sanction of the law. An ordinance provides: "No person shall, in any of the public grounds, make a public address... except in accordance with a permit from the mayor." The validity of this ordinance, under the free speech and personal liberty clauses in the state and federal Constitutions, has been sustained by the supreme courts of the Commonwealth and the

United States. Without such a permit the speaker can be arrested for a crime, and the permit can be refused in the uncontrolled discretion of the Mayor; or he may issue a conditional permit which is revocable if the condition be violated.

This power has existed for many years, and I assume that for the most part permits have been issued as a matter of course. Before the war the police were very tolerant. The Boston authorities pursued the same wise policy of avoiding violence by letting the agitators blow off steam in the open air that was followed by Arthur Woods when he became Police Commissioner of New York City in the unemployment of 1914, after a series of suppressed outdoor anarchistic meetings had produced a very dangerous tension. Instead, he ordered that meetings in Union Square and other parks should be left alone unless an actual disturbance took place, but that plenty of police should be kept in readiness to suppress a disturbance if it occurred. Consequently, the atmosphere immediately cleared up.

THE SACCO-VANZETTI MEETINGS

An entirely different policy was adopted in August, 1927, when Boston Common was made unavailable to speakers who wished to protest against the execution of Sacco and Vanzetti. On the first Sunday after the Governor had refused to alter the death sentences (August 7), when speakers with permits assailed the courts and the state's witnesses, the Superintendent of Police ordered the meeting to disperse. There was no general disorder, but the crowd fell back slowly; altercations followed, and several arrests were made. Permits to Socialists and Communists were thereupon revoked on the ground that the courts had been criticized and the Governor abusively denounced. The following Sunday, the announcement of an effort to meet without a permit attracted a crowd of two or three thousand. A score of uniformed police and as many plain-clothesmen were on hand, and after the arrest of the unlicensed speaker, Powers Hapgood, a hundred patrolmen and several mounted police were on the Common. The last Sunday before the execution, the Common was closed to all meetings. The police said they feared addresses might lead to

arguments and thus to rioting. The New York Times remarked, "As a result of the occurrences on the Common, public tension was heightened."

It seems probable that the crowd came to see the arrests rather than to listen to the speakers, and that if the usual permits had been issued and no interruptions made by the police, the situation could have been easily handled. It is significant that on each Sunday the disturbances appear to have followed and not preceded police interference. Of course, the authorities of Boston had a duty to prevent a riot, and it may be that the state of feeling was such that their action in closing the Common was a justifiable precaution. However, one ground of objection to the speakers deserves attention, that the courts should not be unfavorably discussed. In a democracy no elective and no appointive official should be kept beyond the reach of public opinion.

It may be argued that after Governor Fuller had made his final decision, there was no further value in public discussion of the Sacco-Vanzetti case, so that nothing was lost when speaking on the Common was forbidden. On the contrary, if the case were shown to reveal defects in the judicial system of Massachusetts, steps to remedy these ought to be taken for the common good. The formation of public opinion on changes in criminal procedure could best have been accomplished while all men's minds were focused on the matter, for in ordinary circumstances few people are interested in law reform.

But even more unwarranted than these arrests in 1927 was the action of the police two years later in arresting two speakers on the Common at Sacco-Vanzetti memorial meetings. The police may conceivably have had some justification in 1927 for their fear of disorder at such meetings. No such justification could possibly excuse their conduct in 1929 in arresting Alfred Baker Lewis, secretary of the Socialist Party, because, contrary to arbitrary and unlawful police instructions, he mentioned the names of Sacco and Vanzetti. Lewis had a permit which was revoked during his speech! His arrest followed. A Communist speaker at a similar meeting nearby, also holding a permit, was arrested when he criticised the police. Both men, tried for speaking without a permit, were discharged in court, Judge Carr of

the Municipal Court delivering an opinion sustaining the principle of free speech. The judge said:

"... In their zeal to protect our institutions, the police must not forget that free speech is an American institution; that in time of peace the right is reserved to people to bring about reforms by public discussion of their affairs even if such discussion involves some criticism in their representatives in the executive, legislative or judicial branches of the government....

"As a matter of policy, however, it should be remembered that out of door oratory is often a safety-valve for persons whose opinions we condemn. Prosecuted, they become heroes. Let alone, if they have no worthy cause, they generally attract little attention and without publicity find slight incentive to continue."

HYDE PARK

In contrast to the requirements of permits from the Mayor for speakers on Boston Common is the system adopted in a much greater park and a much larger city, Hyde Park in London. There, a man may get up and address a meeting or gather a crowd of listeners as he talks, without any previous formalities. That is the point—without any previous formalities. No permit whatever is necessary. He is absolutely free to talk, subject of course to being arrested if he says anything in violation of law. The police may, if they choose, close the gates of Hyde Park and exclude all persons, soap-box orators and the wealthy paraders in Rolls-Royces alike; but so long as the gates remain open, any one can speak without any official license. For many years this plan has been in operation, and only once has there been disorder; that was the day in 1866 when the police closed the gates and the crowd leaned against the fence till it fell down. As for its value, hear Charles E. Hughes: "Hyde Park meetings and soap-box oratory constitute the most efficient safety-valve against resort by the discontented to physical force."

I believe that the time is ripe to endeavor to make Boston Common like Hyde Park. It is not only abuses of the Mayor's present power as to the Common that call for change, but also the existence of the power, which may some day make abuse possible.

There are abundant instances of cities where the requirement of a permit existed, where during a strike the Mayor refused permits to any person presenting the strikers' cause to the public, so that their side of the controversy had no chance to be heard. All sorts of controversies might arise where the Mayor at that time might be prejudiced and deny a hearing for a legitimate cause, and from his decision, be it remembered, there is absolutely no appeal.

My contention is that speakers should be free to talk without any previous permission from anybody, but that they should be held fully responsible for what they say.

If it be thought there is danger in Boston that without the permit the police would not know of the speech so as to be on hand in case of trouble, it would be practicable to adopt a plan which works well in France. The prospective speaker does not apply for a permit; he merely notifies the city authorities that he is going to speak. They then send him a receipt, which they can be legally compelled by him to do if they will not send it voluntarily. This receipt can be shown to any policeman as evidence that the meeting is legal. His notice serves as a warning to the city to have as many police on hand as seem desirable under the circumstances. Notice that under this system there is no censorship, no control by officials. Any man is free to speak. No permission in advance is necessary. And the public safety is amply protected.

Z. CHAFEE, JR.

WHAT TO DO?

The remedies for those varied and unique censorships in Boston lie either in legislation or in proceedings in the courts.

1. For the book censorship, the remedies are primarily legislative. But a strongly organized public opinion is essential to any legislative relief. The bills directed to that end have failed twice in the Legislature. The bill introduced by the Massachusetts Library Club should be pushed again. It requires a jury in a criminal proceeding to take into consideration the entire book at issue and not isolated parts, and provides in effect for advance

notice by the police or prosecuting authorities that a book is objectionable before its sale can be made a crime.

2. So far as the censorship of the theater is concerned, it will be necessary to repeal the law under which the Mayor and board can revoke theater licenses "at their pleasure." Particular grounds for revocation should be specified, and should have nothing to do with the performance on the stage. Dramas should be subject, like books, to criminal proceedings in the courts as they are in other cities, and to that control alone.

3. Concerning licensed halls, it will be possible to break down that lawless censorship only by getting the issue into the courts by one form of suit or another. But to do so requires the co-operation of some hall-owner who is willing to take the risk. That is obviously difficult. On the single issue of a discussion of repealing the Massachusetts statute on prohibiting the dissemination of birth control information, it has been proposed to hold a public meeting in Faneuil Hall, owned by the city of Boston, and in case the Mayor's office refuses a permit, to go into the courts with a suit to compel it to be granted. That would raise the issue of the Mayor's discretionary power in prohibiting discussion of this subject.

4. Concerning Boston Common, the requirements for permits should be abolished. Meetings there should be as free as they are in Hyde Park, London, or in the streets of New York and many other cities. No permits are required. Notice is merely given the police so that traffic may be handled. Speakers who break the laws are subject to prosecution. No other control is needed. If space needs to be regulated or meetings protected, a notice to the police of the time of meeting should result in designating the place and giving needed police protection.

5. Last, but not least, of course the old blasphemy act, under which three ridiculous prosecutions have been brought in Massachusetts, should be repealed.

To do all this requires organized effort. A committee has been organized—The Civil Liberties Committee of Massachusetts, with headquarters at 6 Byron St., Boston. Its sponsors appear on the back page of this pamphlet. All those who are in sympathy with its objects are urged to join.

APPENDIX

The list of books below contains the majority of those that have been suppressed during the current Boston frenzy of censorship. The booksellers decline for their own tactical reasons to give out the current list vouched for by them—the list containing those which have been on ban for a time and which now have returned to grace and those which stand taboo at the moment. The list below is a fair and accurate sample of the books that have been banned during the past five years and which set the standard by which no end of similar books may be banned during the next indefinable period in Boston.

Title	Author	Title	Author
Dark Laughter	Sherwood Anderson	*The Captive*	Bourdet
The Wayward Man	St. John Ervine	*Crazy Pavements*	Beverly Nichols
High Winds	Arthur Train	*Young Men in Love*	Michael Arlen
Blue Voyage	Conrad Aiken	*On Such a Night*	Babette Deutsch
The Irishman	St. John Ervine	*The Starling*	Doris Leslie
What I Believe	Betrand Russell	*Pretty Creatures*	William Gerhardi
Circus Parade	Jim Tully	*The Madonna of the Sleeping Car*	Dekobra
The American Caravan			
Move Over	E. Pettit	*Dream's End*	Thorne Smith
Oil	Upton Sinclair	*Tomok the Sculptor*	Eden Phillpotts
From Man to Man	Olive Schreiner	*The Plastic Age*	Percy Marks
Mosquitoes	William Faulkner	*The Hard Boiled Virgin*	F. Newman
Pilgrims	Edith Mannin	*The Rebel Bird*	D. Patrick
Horizon	Robert Corse	*The Butcher Shop*	J. Devening
The Sorrows of Elsie	Andre Savignon	*The Ancient Hunger*	E. Greenberg
Nigger Heaven	Carl Van Vechten	*Antennae*	Herbert Footner
Power	Leon Feutchtwanger	*The Marriage Bed*	E. Roscoe
Twilight	Count Keyserling	*The Beadle*	P. Smith
Black April	Julia Peterkin	*As It Was*	H. T.
An American Tragedy	Theodore Dreiser	*Elmer Gantry*	Sinclair Lewis
The World of William Clissold	H. G. Wells	*Doomsday*	Warwick Deeping
Wine, Women and War		*The Sun Also Rises*	Ernest Hemingway
Manhattan Transfer	John Dos Passos	*Blended Kings*	Kessel & Iswolsky
The Fruit of Eden	Gerard	*Spread Circles*	Ward
Count Bruga	Ben Hecht	*Little Pitchers*	I. Glenn
Kink	Brock	*Master of the Microbe*	Service
Red Pavilion	John Gunther	*Evelyn Grainger*	C. F. Hummel
Ariane	Claude Anet	*Cleopatra's Diary*	Thompson
		The Allinghams	May Sinclair

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